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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

**ROBERT N. HARDIN, Prosecuting Attorney for the
Seventh Judicial Circuit of Arkansas, and W. F.
DENMAN, JR., Prosecuting Attorney for the Eighth
Judicial Circuit of Arkansas** *Appellants*

v.

**CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY,
THE KANSAS CITY SOUTHERN RAILWAY COMPANY,
MISSOURI PACIFIC RAILROAD COMPANY, ST. LOUIS-SAN
FRANCISCO RAILWAY COMPANY, ST. LOUIS SOUTHWEST-
ERN RAILWAY COMPANY, and THE TEXAS AND PACIFIC
RAILWAY COMPANY** *Appellees*

**ON APPEAL FROM
THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF ARKANSAS**

JURISDICTIONAL STATEMENT

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ON APPEAL FROM
THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF ARKANSAS

JURISDICTIONAL STATEMENT

Appellants appeal from the judgment of the United States District Court for the Western District of Arkansas entered October 2, 1967, enjoining enforcement of ARK. STAT. ANN. §§ 73-720 through 722, 73-726 through 729 (Repl. 1957), and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial federal question is presented.

OPINION BELOW

The decree and memorandum opinion of the District Court for the Western District of Arkansas, Hot Springs Division, are not yet reported. Copies are set forth in Appendix A to the Jurisdictional Statement of the Brotherhood of Locomotive Firemen and Enginemen, et al., previously filed in connection with a companion appeal.

JURISDICTION

This action was brought under 28 U.S.C. §§ 1331, 1332, 2201, 2202 and 2282 through 2284 (1964) to invalidate statutes of the State of Arkansas regulating the composition of certain railroad crews. Grounds alleged for such challenge included various provisions of the United States Constitution; a three-judge court was empanelled. On March 5, 1965, the court granted summary judgment for the plaintiffs; judgment enjoining the enforcement of the state statutes was filed on March 8, 1965. *Chicago, R. I. & Pac. R. R. v. Hardin*, 239 F. Supp. 1 (W. D. Ark. 1965).

The District Court decision was reversed by the Supreme Court of the United States. *Brotherhood of Locomotive Engineers v. Chicago, R. I. & Pac. R. R.*, 382 U. S. 423 (1966). The case was remanded to the lower court "for consideration of the constitutional issues left undecided by its previous judgment." 382 U. S. at 438.

After trial and argument on the remaining issues, the District Court again enjoined the enforcement of the state statutes on October 2, 1967. The final decree held the challenged legislation unconstitutional "as violating the Due Process Clause of the 14th Amendment . . . and as being an unconstitutional burden on interstate commerce prohibited by the Commerce Clause. . . ."

Notice of appeal was filed by the appellants and the intervenors on October 31, 1967, in the United States District Court for the Western Division of Arkansas.

Jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U.S.C. § 1253 (1964). The following cases sustain such jurisdiction: *Florida Lime Growers, Inc. v. Jacobsen*, 362 U. S. 73 (1960); *Spielman Motor Sales Co. v. Dodge*, 259 U. S. 89 (1935). See also *Brotherhood of Locomotive Engineers v. Chicago, R. I. & Pac. R. R.*, 382 U. S. 423 (1966); *Missouri Pac. R. R. v. Norwood*, 283 U. S. 249 (1931).

STATUTES INVOLVED

ARK. STAT. ANN. §§ 73-720 through 722, 73-726 through 729 (Repl. 1957), are set forth as Appendix B to the Jurisdictional Statement of the Brotherhood of Locomotive Firemen and Enginemen, et al., previously filed in connection with a companion appeal.

QUESTION PRESENTED

In view of five previous validating decisions of the Supreme Court, have conditions of Arkansas railroading so changed that the United States Constitution now deprives the State of Arkansas of power to enforce aspects of its railroad safety laws which regulate the employment complement of certain freight and switch train crews operating in the state?

STATEMENT

The State of Arkansas, on behalf of the original defendants in this case, adopts and concurs with the Statement presented by appellants Brotherhood of Locomotive Firemen and Enginemen, et al., in their previously filed Jurisdictional Statement in connection with a companion appeal.

THE QUESTIONS ARE SUBSTANTIAL

The State of Arkansas, on behalf of the original defendants in this case, adopts and concurs with the reasons for plenary consideration of this appeal given by appellants Brotherhood of Locomotive Firemen and Enginemen, et al., in their previously filed Jurisdictional Statement in connection with a companion appeal.

In addition, the safety of Arkansas travelers and Arkansas workmen is of peculiar concern to the officials of this jurisdiction.

While the statutes in question were passed long ago, they were reaffirmed by the people of the state in 1958. Thus by popular vote the people of Arkansas expressed the legislative judgment that the full crew laws are needed now. Hazards created by the recent dramatic expansion of commerce in our state furnish ample justification for such judgment.

Appellants believe that the question presented by this appeal is substantial and of public importance.

Respectfully submitted,

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